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IN THE

Supreme Court of the United States

October Term, 1960

No. 607

[redacted], [redacted] and [redacted],

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

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IN THE

Supreme Court of the United States

October Term, 1960

No. .....

SYNANON FOUNDATION, INC., CHARLES E. DEDERICH, ADALINE AINLAY, and JESSE W. PRATT,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States (1959 Pocket Supplement), moves that the judgment and order of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, rendered and entered on the 22nd day of July, 1960 (rehearing thereon was denied the 2nd day of August, 1960), be affirmed, and/or that the appeal taken therefrom to the above entitled court be dismissed.

The said motion to affirm the judgment or dismiss this appeal is made upon the following grounds:

(1) That the appeal herein does not present a substantial federal question;

(2) That the judgment and order rest on an adequate non-federal basis;

(3) That the entire appeal is moot inasmuch as the appellant is only appealing from one of two criminal convictions, thus permitting the probationary sentence to remain, regardless of any action to be contemplated by this appeal.

THE QUESTIONS PRESENTED.

The appellant was charged upon a misdemeanor complaint filed in the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, with, among other things, violation of Section 11391 of the California Health and Safety Code, and Section 9105 of the Santa Monica Municipal Code. After trial, appellants were found guilty of the said two counts.

At Footnote 3 of appellant's Jurisdictional Statement is the statement that he does not appeal his conviction of Section 9105 of the Santa Monica Municipal Code, which charged him with a violation of the zoning law, to wit: Using his building as a hospital and sanitarium in an R-4 zone, wherein such use is not permitted.

Therefore, this appeal is only from the conviction under Section 11391 of the California Health and Safety Code, which reads as follows:

> "No person shall treat an addict for addiction except in one of the following:
>
> (a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control.

(b) A city or county jail

(c) A state prison

(d) A state narcotic hospital

(e) A state hospital

(f) A county hospital

This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age."

Appellant does not contend he is within one of the above six designated classes.

Therefore, the following questions are presented:

A. Is the term "addict," as contained in Section 11391 ~~11721~~ of the California Health and Safety Code, fatally vague and uncertain so as to be violative of the Fourteenth Amendment to the Constitution of the United States?

B. Is the term "treat," as contained in Section ~~11721~~ 11391 of the California Health and Safety Code, and as applied to appellants in the instant case,

(1) An unconstitutional exercise of the state police power?

(2) Fatally vague and uncertain?,

(3) An infringement of appellants' freedoms of conscience, assembly, and right of self-determination?

C. Is a judgment fatally vague and uncertain so as to be violative of the Fourteenth Amendment of the Constitution of the United States where appellant is

convicted of Section ~~11721~~ 11391 of the California Health and Safety Code, *and* Section 9105 of the Santa Monica Municipal Code, and where the trial court orders that "proceedings be suspended without imposition of sentence for the period of probation hereinafter set forth, and that summary probation be granted for a period of two years on the following terms and conditions: (Appellant) not to violate any law, City, County or State, and to discontinue use of the premises by (May 10, 1960)"[1]?

I.

No Substantial Federal Question Is Presented by This Appeal.

A. The Modern Trend in Criminal Statutes Is a "Rule of Reason."

The general rules as to sufficiency of the statement of a statutory crime are well understood. In 14 Am. Jur., "Criminal Law," Section 19, pages 773-774, is the statement:

> "The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen *with reasonable precision* what acts it intends to prohibit, so that he may have an understandable rule of conduct, and to know what acts it is his duty to avoid. . . . Every uncertainty, however, which may exist in the operation of a criminal statute does not render it void." (Emphasis added.) (Citing *Pacific Coast Dairy v. Police Court*, 214 Cal. 668, 8 P. 2d 140, 80 A. L. R. 1217.)

[1]See: Minutes of Trial Court.

It is a recognized rule of construction as stated in *Ex parte Frye*, 143 Tex. Cr. R. 9, 156 S. W. 2d 531, 533:

> "Every presumption is in favor of the constitutionality of an act of the legislative body of a state and the courts will not declare it invalid unless, in their judgment, it clearly and unmistakably comes within the inhibition of the Constitution." (*Cooley's Const. Lim.*, 8th Ed., Vol. I, page 371; *Graves v. Minn.*, 272 U. S. 425, 47 S. Ct. 122, 71 L. Ed. 331, and other cases cited.)

In *Lorensen v. Superior Court*, 35 Cal. 2d 49 (216 P. 2d 859), defendant and others were charged with conspiracy to commit certain named crimes and "to pervert and obstruct justice or the due administration of the laws." On denying a contention that the quoted part was void for uncertainty and ambiguity, the court states:

> "To comply with the constitutional requirement of due process of law the crime for which a defendant is being prosecuted must be clearly defined. It is only necessary that the words used in the statute be well enough known to enable those persons within its reach to understand and correctly apply them. 'To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.'"

B. Is the Term "Addict" Fatally Vague and Uncertain?

On page 8 of his Jurisdictional Statement, appellant states that of the fifty residents living in his premises at the time of filing the Complaint, "said persons had

formerly been addicted to narcotics, and that they had not used narcotics for considerable periods of time." (Emphasis added.) This is a misconstruction of the evidence. Of 200 persons treated by appellant for narcotics addiction, 75% came into Synanon from off the street while under the influence of narcotics or while in the beginning stages of withdrawal from narcotics.[2]

Again, on page 8 of his Jurisdictional Statement is this statement: "At no time were they given . . . medical or psychiatric therapy for their affliction. . . ." This conclusion is not supported by the evidence. See Engrossed Statement. Further, implicit in appellant's failure to appeal from his conviction of Section 9105 of the Santa Monica Municipal Code (using his building as a hospital and sanitarium, in violation of the zoning law), is the tacit admission that therapy of the type to be obtained in a hospital and sanitarium is, in fact, administered, and that there is competent evidence in the record to support such a conviction.

At the third full paragraph of page 8 of his Jurisdictional Statement, appellant states, ". . . the 'Synanon method' has been considerably more effective than accepted methods for coping with the problems of narcotic addiction. . . ." It appears on the one hand that appellant denies "treating addicts for addiction," and on the other hand claims great success for *coping* with the problems of *narcotic addiction.*

At page 10 of his Jurisdictional Statement, is the statement that, ". . . there was not even evidence

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[2]Engrossed Statement, page 4, lines 19-29.

or claim that on or about August 28, 1959, any member was in any stage of 'cold turkey' withdrawal and, thus, to any extent still under the 'influence' of narcotics." This conclusion, similarly, is nowhere to be found in the evidence. Defense witness, Dr. Casselman, a medical doctor, an expert in narcotic addiction, was family physician for appellant during August, 1959. He saw from fifty to one hundred fifty persons under the influence of narcotics come into appellants' building for the purpose of undergoing withdrawal from narcotics.[3]

The evidence is clear that, on the date alleged in the Complaint, numerous persons resided in appellants' premises, at a time during which they were under the influence of narcotics, and that such testimony is supported by appellants' own narcotic expert witness. To suggest that persons currently under the influence of narcotics are not addicts requires reasoning beyond the ken of mortal man or jurisprudence.

Appellant, at page 11 of his Jurisdictional Statement, cites a total of fifteen interpretations of when addiction ceases, to support his thesis that the term "addict," as used in Section 11391 of the California Health and Safety Code is fatally vague and uncertain.

It is submitted that no matter what standard is used to test when addiction ends, it is a fact that addiction *exists*, and one *is* an addict, *so long as* narcotics are in that person's system and so long as that person has a *craving* for narcotics; that is, narcotic addiction is

[3]Engrossed Statement, page 21, lines 3-9.

both an *emotional and a physical state* that exists in a human body.

> "Drug addiction may be defined as a state of periodic or chronic intoxication produced by the repeated consumption of a drug. . ." ("Addiction Liability and Narcotics Control," *74 Public Health Reports 760*, by Nathan B. Eddy, M.D., and Harris Isbell, M.D., September, 1959.) "The theory generally accepted is that . . . narcotic drugs alter the physical chemistry of the neuronal structures." ("Management and Treatment of Drug Addiction," *Journal of Chronic Diseases*, page 316, March, 1959.)

C. Is the Term "Treat" an Unconstitutional Exercise of the State Police Power, Fatally Vague and Uncertain, or an Infringement of Appellants' Freedoms of Conscience, Assembly, and Self Determination?

(1) It is Not an Unconstituional Exercise of the State Police Power.

Does California have a legitimate right, under its police power, to legislate and limit the places in which narcotic addicts may be treated for addiction? Section 11391 of the California Health and Safety Code limits such treatment to jails, prisons, state narcotic hospitals, or other institutions ". . . approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control." It is to be noted that the legislative intent was to confine narcotic treatment centers to those places of security where the patient/inmate can be kept under restraint and control during his withdrawal from narcotics.

The treatment of addicts for addiction, both in a medical and in a legislative sense, requires that the patient be kept under control and restraint so as to protect himself, his attendants, and society from the addict himself as he commences withdrawal.

"Even under the best conditions, however, withdrawal is a disagreeable experience. Patients become hostile, resistive, and often threaten to leave. Hysterical outbursts are not uncommon, and suicidal attempts are sometimes made."

("The Treatment of Drug Addiction," *The Medical Clinics of North America,* by Marie Nyswander, M.D., May 1958, page 819.)

"Finally, the regulation of withdrawal treatment requires experienced physicians and attendants trained in the observation and evaluation of abstinence syndromes. In certain cases (cardiac decompensation, tuberculosis, general debility) excessively abrupt withdrawal may result in death."

(*"Drug Addiction,"* Ausubel, Random House, 1958, page 80.)

California has a legitimate interest in the narcotic problem and may validly legislate therein.

"Four states currently contain 77% of known addicts: New York (45%), Illinois (14%), *California (13%),* and Michigan (5%)." (Emphasis added.) (*171 Journal of the American Medical Association 518,* October 3, 1959.)

As was said in *Miller v. Board of Public Works,* (1925), 195 Cal. 477, 234 Pac. 381:

"The (police) power is elastic; its scope changes with social and economic progress, and in its exer-

cise the Legislature and the courts continually apply new views of what constitutes new legislation for the preservation of the public peace, safety, morals, health, and general welfare."

(2) It Is Not Fatally Vague and Uncertain.

The record indicates that numerous persons go to appellants' premises while under the influence of narcotics or in various stages of withdrawal therefrom. Once admitted, the patient is given a regimented and thorough step-by-step course of therapy. There is no allegation that appellant administers narcotics as part of the method of therapy. Instead, he takes his addict-patients through sudden and complete withdrawal (the "cold-turkey" system), during which time the patient is physically and emotionally bolstered, and after which a form of psycho-therapy is commenced. It is clear that the "cold-turkey" method of withdrawl is recognized as a method of attacking addiction.

> "The three methods of drug withdrawal are: (1) *abrupt withdrawal of all narcotics, known as 'cold turkey'*; (2) abrupt withdrawal with substitution of a drug as apomorphine or insulin; and (3) gradual withdrawal with use of morphine or methadone as a substitute drug." (Emphasis added.)
>
> ("The Treatment of Drug Addiction," by Marie Nyswander, M.D., *The Medical Clinics of North America*, May, 1958, page 819.)

It is submitted that Sections 11390-11396 of the California Health and Safety Code concern certain re-

quirements for *treatment* of addicts for addiction whether that treatment be by *any* of the above three methods or means of drug withdrawal.

(3) It Is Not an Infringement of Appellants' Freedoms of Conscience, Assembly, and Self-Determination.

As above indicated, California has a legitimate interest under its police powers in regulating the places in which narcotic addicts are treated.

D. Is the Judgment Fatally Vague and Uncertain?

In its judgment, the trial court told appellants they had treated addicts for addiction in a place not specified in Section 11391 of the California Health and Safety Code, and that they had used their building as a hospital and sanitarium in a zone wherein such uses are not permitted under Section 9105 of the Santa Monica Municipal Code. Rather than impose sentence, the trial court placed appellants on two years' summary probation on condition they not violate any laws during the term of probation, and that they vacate their building by a date certain.

The only conduct proscribed by the terms of probation is similarly proscribed to all good citizens: Do not violate any laws.

II.

The Judgement and Order Herein Rest on an Adequate Non-Federal Basis.

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which constitutes the final court of appeal from the Municipal Court judgment of conviction and order denying motion for a new trial, rendered its judgment in the instant case without a written opinion.

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 547-549, the following statement is found:

> "Where the highest court of the State delivers an opinion and it appears that the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment." (Citing numerous cases.)

The record in the instant case presents the identical consideration, as the record shows that the State appeal raised various non-federal grounds upon which the appellate judgment may have rested.

III.
Conclusion.

It is respectfully submitted that the judgment and order appealed from be affirmed and the appeal therefrom dismissed, for the following reasons:

1. The appeal presents no substantial Federal question.
2. The decision appealed from might have rested upon adequate non-federal grounds.
3. The entire appeal is moot inasmuch as appellant fails to appeal from his conviction under Section 9105 of the Santa Monica Municipal Code; thus his probationary sentence would remain in force and effect despite any action to be contemplated by this appeal from the Conviction under Section 11391 of the California Health and Safety Code.

Respectfully submitted,

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